

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

**(Continuation of California Notice Register 2008, No. 8-Z,
and Meetings of February 8 and March 7, 2008.)**

NOTE: The Fish and Game Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption. See the text of this notice—changes are shown in **bold** type.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 220, 240, 316.5 and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 316.5 and 2084 of said Code, proposes to amend Section 27.80, Title 14, California Code of Regulations, regarding ocean salmon sport fishing.

Updated Informative Digest/Policy Statement Overview

The Pacific Fishery Management Council (PFMC) annually reviews the status of west coast salmon populations. As part of that process, it recommends ocean salmon fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Salmon Fishery Management Plan (FMP). These recommendations coordinate west coast management of sport and commercial ocean salmon fisheries in the Federal fishery management zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. These recommendations are subsequently implemented as ocean fishing regulations by the National Marine Fisheries Service (NMFS).

California's sport fishing regulations will need to conform to the new Federal regulations to achieve optimum yield in California. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport fishery in State waters (zero to three miles offshore) which are consistent with Federal fishery management goals and are effective at the same time.

The text in bold below replaces the text from original Initial Statement of Reasons (ISOR) and Informative Digest and provides a summary of a PFMC inseason action and the three options developed for public review at the PFMC meeting in Sacramento on March 9-14, 2008.

The PFMC has determined that Sacramento River Fall Chinook (SRFC) merits further protection in 2008 as the stocks are projected to be at a record low abundance level in 2008. The PFMC Salmon Technical Team (STT) updated the estimate of SRFC Chinook escapement based upon new information. The revised projection lowers the 2008 SRFC abundance forecast to 54,570 SRFC adults. This

new estimate assumes no further fishing in 2008 and is much lower than previous estimates.

The NMFS has determined that poor ocean conditions are a major factor of the low 2008 SRFC abundance. The NMFS also expects these poor conditions to continue affecting subsequent years' SRFC escapements in the near future. Also the 2008 SRFC adult abundance is expected to be well below the lower boundary of the FMP conservation goal of 122,000 to 180,000 SRFC adult escapement.

With this new information, the PFMC voted to recommend closure of all ocean salmon fisheries until the final 2008 federal regulations are enacted on May 1, 2008 to provided maximum protection for SRFC. This early season closure is a separate Commission emergency action already underway.

On March 14, 2008, the PFMC developed three 2008 season structures for public review to severely reduce or eliminate fishery impacts on SRFC. The PFMC options allow for a very limited 2008 season, a 2008 season with no fishing after March 31, 2008 with 2009 early season opening dates, and a season with no fishing after March 31, 2008 and no 2009 opening dates. The final PFMC regulation recommendations will be made on April 11, 2008 in Seattle, Washington.

Under all three options, the reference to Section 1.74 in subsection 27.80(a)(1) is proposed to be removed as salmon report cards are no longer required in ocean waters north of Horse Mountain and additional minor changes are proposed for regulation clarity. The specific differences from current regulations are discussed in the following paragraphs.

Option I

Seasons: For north of Horse Mountain and Humboldt Bay (Klamath Management Zone), the season is open May 24 through May 26, 2008, July 4 through July 6, 2008, and August 28 through August 31, 2008 (113 fewer days than in 2007). The area between Horse Mountain and Point Arena (Fort Bragg) is open February 16 to March 31 (or as soon thereafter as the emergency regulations are approved), May 24 through May 26, 2008, July 4 through July 6, 2008, and August 28 through August 31, 2008 and will open in 2009 on February 14, 2009 (213 fewer days than in 2007). The area between Point Arena and Pigeon Point (San Francisco, Monterey, and Moss Landing) is open May 18 through May 26, 2008 and will open in 2009 on April 4, 2009 (209 fewer days than in 2007). The area south of Pigeon Point (Monterey and Moss Landing) is open May 18 through May 26, 2008 and will open in 2009 on April 4, 2009 (175 fewer days than in 2007).

Option II

Seasons: For north of Horse Mountain and Humboldt Bay (Klamath Management Zone), the season will be closed for all of 2008 (123 fewer days than in 2007). The

area between Horse Mountain and Point Arena (Fort Bragg) is open February 16 to March 31 (or as soon thereafter as the emergency regulations are approved) and will open in 2009 on February 14, 2009 (223 fewer days than in 2007). The area between Point Arena and Pigeon Point (San Francisco, Monterey, and Moss Landing) is closed for all of 2008 and will open in 2009 on April 4, 2009 (219 fewer days than in 2007). The area south of Pigeon Point (Monterey and Moss Landing) is closed for all of 2008 and will open in 2009 on April 4, 2009 (184 fewer days than in 2007).

Option III

This option is the same as Option III except there are no 2009 early season openers proposed. Any 2009 openers will be decided in April 2009 by the PFMC and Commission.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at UC Davis, Bodega Bay Marine Laboratory, Lecture Hall, 2099 Westside Road, Bodega Bay, California, on Friday, April 11, 2008 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS FURTHER GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Fish and Game Commission Conference Room, 1416 Ninth Street, Room 1320, Sacramento, California, on Tuesday, April 15, 2008), at 10:00 a.m., or as soon thereafter as the matter may be heard. Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. Written comments mailed, faxed or e-mailed to the Commission office, must be received before 5:00 p.m. on April 14, 2008. All comments must be received no later than April 15, 2008 at the hearing in Sacramento, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John Carlson, Jr., or Sherrie Koell at the preceding address or phone number. **Ms. Marija Vojkovich, Regional Manager, Marine Region, Department of Fish and Game, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. Under a normal season ocean salmon anglers contribute about \$110,400,000 in direct revenues to the State's business sector. This is based on a 2006 US Fish and Wildlife national survey of fishing, hunting, and wildlife associated recreation for California. Adding the indirect and induced effects of this initial revenue contribution and the total benefit to California's economy is normally about \$167,000,000. This is equivalent to about \$63,000,000 in total wage earnings to Californians, or about 1,400 jobs in the state. Depending on which option the PFMC adopts and implements in May 2008, the following statewide impacts to businesses may occur.

Option I

In general, Option I would result in an 89.5 percent reduction in the available days of ocean salmon fishing compared to a normal fishing season. Using national data on recreational angler expenditures on goods and services, we estimate the direct loss to the business community of about \$98,900,000. Because of the indirect and induced affects of this loss,

California's total economic output is estimated to be reduced \$149,500,000. Adverse impacts to total wage earnings and California jobs would be about \$56,100,000 and 1,252, respectively.

Option II and III

Option II and III would result in a 94.3 percent reduction in the available angling days for ocean salmon. Using national data on recreational angler expenditures on goods and services, the direct loss to the business community is estimated to be about \$104,200,000. Adverse impacts to total wage earnings and California jobs would be about \$157,500,000 and 1,319, respectively.

The Commission has made an initial determination that the amendment of this regulation may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
 - (ii) consolidation or simplification of compliance and reporting requirements for businesses;
 - (iii) the use of performance standards rather than prescriptive standards; or
 - (iv) exemption or partial exemption from the regulatory requirements for business.
- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Option I

In general, Option I would result in an 89.5 percent reduction in the available days of ocean salmon fishing under a normal season. On a pro-rata basis, reducing the estimated business output for the State by this same percentage could result in a reduction of 1252 jobs.

Option II and III

Option II would result in a 94.3 percent reduction in the available angling days for ocean salmon under a normal season. On a pro-rata basis, reducing the estimated business output for the State by this same percentage could result in a reduction of 1319 jobs.

(c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. **There are no new reporting requirements imposed as a result of the proposed regulations.**

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

There are no new reporting requirements to State agencies as a result of the proposed regulations. However, reduced recreational fishing opportunities would likely result in revenue impacts to the State, estimated to be up to \$2,993,165. This is due to reduced demand for recreational fishing licenses, permits, and or stamps, normally purchased from the State and increased enforcement for the 2008 ocean salmon season.

(e) Nondiscretionary Costs/Savings to Local Agencies: None.

(f) Programs Mandated on Local Agencies or School Districts: None.

(g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.

(h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

John Carlson, Jr.
Executive Director

Date: March 25, 2008